

## Refugee resettlement as an alternative to asylum

Article (Accepted Version)

Hashimoto, Naoko (2018) Refugee resettlement as an alternative to asylum. *Refugee Survey Quarterly*, 37 (2). pp. 162-186. ISSN 1020-4067

This version is available from Sussex Research Online: <http://sro.sussex.ac.uk/id/eprint/76397/>

This document is made available in accordance with publisher policies and may differ from the published version or from the version of record. If you wish to cite this item you are advised to consult the publisher's version. Please see the URL above for details on accessing the published version.

### **Copyright and reuse:**

Sussex Research Online is a digital repository of the research output of the University.

Copyright and all moral rights to the version of the paper presented here belong to the individual author(s) and/or other copyright owners. To the extent reasonable and practicable, the material made available in SRO has been checked for eligibility before being made available.

Copies of full text items generally can be reproduced, displayed or performed and given to third parties in any format or medium for personal research or study, educational, or not-for-profit purposes without prior permission or charge, provided that the authors, title and full bibliographic details are credited, a hyperlink and/or URL is given for the original metadata page and the content is not changed in any way.

# REFUGEE RESETTLEMENT AS AN ALTERNATIVE TO ASYLUM

Naoko Hashimoto\*

## ABSTRACT

Despite the importance of refugee resettlement being frequently emphasised, there is only a limited amount of empirical research on why an increasing number and variety of States admit refugees through resettlement, when it is not an obligation under international law. This paper first sets out the four traditional perspectives on States' motives for resettlement, based on well-established theories of International Relations, namely egoistic self-interest, altruistic humanitarianism, reciprocity, and international reputation. After examining the applicability of each of the traditional perspectives in light of past and recent resettlement practice in a deductive manner, the paper puts forward a different hypothesis: that States perceive resettlement as an alternative to asylum in terms of migration management, given the recent empirical and discursive trend. While the paper by no means suggests that such a perception is a *justifiable* explanation for States' motives for resettlement, the perception seems to add a different and relevant hypothesis when tracing the logic behind States' increasing interest in resettlement.

## 1. INTRODUCTION

Whenever solutions to refugee situations are discussed, it is almost universally echoed that resettlement should be promoted and expanded.<sup>1</sup> However, only a limited amount of contemporary, empirical research has been conducted to decipher why an increasing number and variety of States have started actively engaging in resettlement. The number of resettlement countries in the world has more than doubled over the past ten years.<sup>2</sup> Of the traditional three durable solutions, resettlement is not a legal obligation, while the other two solutions – voluntary repatriation and local integration – are premised upon well-established international legal norms. It may be puzzling that some States, which

---

\* PhD Candidate, University of Sussex; MSt. in Forced Migration, Refugee Studies Centre, University of Oxford; LLM in International Human Rights Law, University of London; Research Affiliate of the Refugee Law Initiative, University of London; International Fellow of the Nippon Foundation. The views expressed in this article do not represent any of the author's previous affiliations including the United Nations High Commissioner for Refugees (UNHCR), the International Organization for Migration (IOM), and the Government of Japan. The author would like to express thanks to Prof. Tony Fielding, Dr David Cantor, Dr Paul Scalise, Mr. Richard Williams, Prof. Michael Collyer, Dr James Hampshire, and an anonymous reviewer for their valuable comments and guidance.

<sup>1</sup> For example, see *the New York Declaration 2016*, available at: <http://refugeesmigrants.un.org/declaration> (last visited 29 Nov. 2016); and W. L. Swing, "Practical considerations for effective resettlement", *Forced Migration Review*, Issue 54, 2017, 4-6.

<sup>2</sup> H. Nakashiba, *Postmillennial UNHCR refugee resettlement: New developments and old challenges*, UNHCR, New Issues in Refugee Research, Research Paper No. 265, Nov. 2013; H. Beirens & S. Fratzke, *Taking Stock of Refugee Resettlement: Policy Objectives, Practical Tradeoffs, and the Evidence Base*, Brussels, Migration Policy Institute Europe, Report, May 2017.

are assumed by realists to be self-interest-maximising entities,<sup>3</sup> proactively reach out to vulnerable foreigners who have yet to reach their jurisdiction. It is true that the vast majority of resettlement cases are admitted by traditional immigration countries often with high Gross Domestic Products such as the United States (US), Canada, Australia, and New Zealand. However, some non-immigration countries, including Japan and the Republic of Korea (South Korea), as well as middle-income countries such as Argentina, Brazil, Chile, and Romania have recently embarked upon resettlement. *What are the motives, logics, and incentives that encourage States to opt for accepting refugees through the resettlement route?* This is the central question that this paper will address. The question is not only theoretically critical in Refugee and Migration Studies, as the paper will test the applicability of traditional International Relations theories to the way resettlement is currently implemented around the world and will propose a different hypothesis. But it also has policy implications: the answer may inform negotiation strategies employed by those international and national actors trying to promote resettlement around the world.

The paper begins with a brief review of the nature of the three durable solutions – voluntary repatriation, local integration, and resettlement – within the current international refugee protection regime, which serves to highlight puzzles surrounding the machinery of resettlement. It is followed by a categorisation of the traditional perspectives on the drivers and assumptions behind resettlement, and a deductive testing of the applicability of each of the perspectives to historical resettlement cases and the current global resettlement spectrum. After demonstrating the limited ability of the four traditional views to explain the contemporary resettlement landscape, the paper subsequently proposes a different hypothesis to understand States' motives for resettlement based upon an emerging trend in refugee protection practices, namely *resettlement as a 'rational' alternative to asylum for sovereign States wishing to manage migration*. Having explained the rationale of the hypothesis, the paper concludes by proposing that this hypothesis should be added and tested as a potential explanatory logic when tracing the process in which an increasing number and variety of States decide to embark upon resettlement.

## 2. NATURE OF THE THREE DURABLE SOLUTIONS

---

<sup>3</sup> K. Waltz, *Theory of International Politics*, London, Longman Higher Education, 1979; R.O. Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy*, Princeton, Princeton University Press, 1984; H. Morgenthau, *Politics Among Nations: The Struggle for Power and Peace*, U.S.A., McGraw-Hill (revised by Kenneth W. Thompson), 2005; J. Snyder, "Realism, Refugees, and Strategies of Humanitarianism", in A. Betts & G. Loescher (eds.), *Refugees in International Relations*, Oxford, Oxford University Press, 2011, 29-52.

The three durable solutions to the displacement situations of refugees comprise voluntary repatriation, local integration, and third country resettlement.<sup>4</sup> What are the basic natures of these respective solutions in the current international refugee regime?

First, voluntary repatriation of refugees to their country of origin, whenever the situation allows, is based upon well-established international legal norms. Article 13 (2) of the 1948 Universal Declaration of Human Rights (UDHR) enshrines that “[e]veryone has the right to leave any country, including his own, and return to his country”. Likewise, Article 12 (4) of the 1966 International Covenant on Civil and Political Rights (ICCPR)<sup>5</sup> provides that “[n]o one shall be arbitrarily deprived of the right to enter his own country”. The 1951 Convention Relating to the Status of Refugees (hereinafter the Refugee Convention)<sup>6</sup> itself also contains a so-called cessation clause in Article 1C, which lists several possible scenarios where the refugee status may cease to apply. Such possibilities include cases of return to his/her country of origin when “the circumstances in connection with which [s]he has been recognised as a refugee have ceased to exist”. These provisions in the major and relevant international legal instruments demonstrate that voluntary repatriation is enshrined in a normative relation between refugees and States, in that refugees have the right to return to their country of origin, while States of origin have the legal obligation to (re)admit them. Although the cessation clause is rarely invoked for various practical reasons, host States may lawfully cancel the refugee status once the risk of persecution in the countries of origin is eliminated, which would inevitably encourage refugees’ repatriation unless the refugee has already obtained permanent residency or citizenship by then.

Second, local integration is also underpinned by various international legal norms. The minute an asylum-seeker enters an area of jurisdiction or effective control of another State either by land, sea, or air, the State bears the legal obligation not to deport the individual, until and unless s/he is found not to be in need of or deserving of international protection. The principle of *non-refoulement* as enshrined in Article 33 (1) of the Refugee Convention has even come to be recognised as customary international law.<sup>7</sup> The Refugee Convention also includes various rights and entitlements for those who are officially recognised as refugees in Articles 12 to 31 as well as Article 34. Hathaway argues that some of those rights and entitlements should be granted to asylum-seekers even before official recognition as refugees.<sup>8</sup> In addition, a number of provisions of major international human rights instruments such as the ICCPR, the International Covenant on Economic, Social, Cultural Rights (ICESCR)<sup>9</sup>, the Convention against Torture and Other

---

<sup>4</sup> UNHCR, *UNHCR Resettlement Handbook*, Geneva, UNHCR, 2011, 28.

<sup>5</sup> International Covenant on Civil and Political Rights, 999 UNTS, 16 Dec. 1966 (entry into force: 23 Mar. 1976).

<sup>6</sup> Convention relating to the Status of Refugees, 189 UNTS, 28 Jul. 1951 (entry into force: 22 Apr. 1954).

<sup>7</sup> G. S. Goodwin-Gill & J. McAdam, *The Refugee in International Law*, Third Edition, Oxford, Oxford University Press, 2011, 248.

<sup>8</sup> J. Hathaway, *The Rights of Refugees under International Law*, Cambridge, Cambridge University Press, 2011.

<sup>9</sup> International Covenant on Economic, Social and Cultural Rights, 993 UNTS, 16 Dec. 1966 (entry into force: 3 Jan. 1976).

Cruel, Inhuman or Degrading Treatment or Punishment (CAT)<sup>10</sup>, and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD)<sup>11</sup> among others, provide for various rights of foreign nationals including refugees and non-discrimination within the jurisdiction of States Parties. Thus, local integration of refugees is an international norm not only for States Parties to the Refugee Convention but also for States that are Parties only to human rights instruments.

Naturally, why States observe international legal norms is an interesting question, but one that lies outside the scope of this paper. Important research into the reasons why sovereign States comply with international law has been conducted elsewhere.<sup>12</sup>

Third, in contrast to the normative nature of voluntary repatriation and local integration, resettlement is merely a discretionary policy option. No State has a legal obligation proactively to admit refugees via resettlement who are still outside their jurisdiction; nor can a refugee claim a ‘right’ to be resettled. While the term “international co-operation” is mentioned in the preamble paragraph of the Refugee Convention, the principle of responsibility-sharing has remained aspirational rather than a duty of States, at least from a legal point of view.<sup>13</sup>

Notwithstanding the weak legal standing of resettlement in the current international refugee regime, an increasing number of countries have embarked upon resettlement. The number of countries with official and regular resettlement programmes has roughly doubled over the past decade. As of the end of 2015, 33 countries had some sort of regular resettlement programmes under which approximately 100,000 refugees find a new home every year. Why do States voluntarily and proactively admit refugees through resettlement even when not required under international law? We now look at the conventional wisdom on this question.

### **3. TRADITIONAL PERSPECTIVES ON STATES’ MOTIVES FOR RESETTLEMENT**

Given that resettlement falls outside the realm of international law, we need to turn to a discipline other than law. Although there is no established theory on States’ motives for resettlement in any discipline, International Relations (IR) appear to provide useful guidance, since resettlement is fundamentally an international policy of States influenced by and influencing other States’ policies. By employing established IR theories concerning international cooperation and burden-sharing, four categories of States’

---

<sup>10</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1465 UNTS, 10 Dec. 1984 (entry into force: 26 Jun. 1987).

<sup>11</sup> International Convention on the Elimination of All Forms of Racial Discrimination, 660 UNTS, 3 Jul. 1966 (entry into force: 4 Jan. 1969).

<sup>12</sup> H. Koh, “Why do states obey international law?” *Yale Law Journal*, 106, 1997, 2615-2634.

<sup>13</sup> For this reason, this article interchangeably uses the terms ‘responsibility-sharing’ and ‘burden-sharing’ without attaching any substantial difference to the meanings of the two terms.

motives for resettlement may be inferred: (a) egoistic self-interest; (b) humanitarian altruism; (c) reciprocity; and (d) international reputation.<sup>14</sup>

First, traditional realists who regard States as self-interest-maximising entities would argue that States resettle refugees in their pursuit of egoistic self-interest.<sup>15</sup> Betts, for instance, demonstrated through four case studies that Northern States have contributed to the protection of refugees in the global South only when their interests are linked with other issue-areas such as immigration, security, and trade.<sup>16</sup> This argument underlines the utilitarian value rather than humanitarian value of resettlement, in line with the “humanitarian – utilitarian divide” coined by Noll and van Selm as an analytical framework for resettlement decisions.<sup>17</sup> The utility of resettlement may lie in demographics, in that it can fill labour shortages in some industrialised countries, or in diplomatic objectives, by undermining the regimes in countries that produce refugees. The latter was particularly palpable in the Cold War era when those fleeing communist regimes were almost automatically accepted by so-called ‘Western States’ as *prima facie* refugees. To borrow the concepts developed by March and Olsen, “the logic of consequences” rather than that of appropriateness would explain the States’ motives behind resettlement policies.<sup>18</sup> States are more concerned with the beneficial outcomes that resettlement will eventually bring them – such as labour force, ideological victory, and security in the region of origin for trade promotion – rather than the value of resettlement *suis generis*.

Second, at the extreme opposite of egoism lies humanitarian altruism. Idealists who emphasise cosmopolitanism and benevolence would argue that it is out of altruistic humanitarianism that States proactively resettle refugees. According to Carens, for instance, resettlement is a moral duty, particularly for rich democratic States.<sup>19</sup> Similarly, Gibney puts forward that humanitarianism should underpin the responsibilities of liberal democratic States to participate in resettlement.<sup>20</sup> From a more empirical standpoint, Noll and van Selm conclude that it is a myth that States use resettlement only for utilitarian purposes, based upon their examination of resettlement practices of the US, Canada and

---

<sup>14</sup> The MPI Report issued in May 2017 (while this manuscript was being reviewed) puts forward a different set of reasons for States to undertake or expand resettlement: (a) value-based motivations; (b) strategic protection considerations; (c) national and domestic interests; and (d) responding to external incentives or opportunities. While the content of the reasons mentioned in the MPI Report more or less overlaps with my argument, the four categories proposed in this paper are based upon well-established IR theories. See footnote 2.

<sup>15</sup> See footnote 13.

<sup>16</sup> A. Betts, *Protection by Persuasion: International Cooperation in the Refugee Regime*, Ithaca NY, Cornell University Press, 2009.

<sup>17</sup> G. Noll & J. van Selm, “Rediscovering Resettlement”, *Insight* No.3, Washington DC, Migration Policy Institute, 2003.

<sup>18</sup> J. G. March & J. P. Olsen, “The Institutional Dynamics of International Political Orders”, *International Organization*, 52(4), 943-969, 1998.

<sup>19</sup> J. Carens, *The Ethics of Immigration*, Oxford, Oxford University Press, 2013, 213.

<sup>20</sup> M. Gibney, *The Ethics and Politics of Asylum: Liberal Democracy and the Response to Refugees*, Cambridge, Cambridge University Press, 2004, 237-247.

some European countries.<sup>21</sup> They drew particular attention to the fact that the US has accepted refugees who appear to be extremely difficult to integrate.<sup>22</sup> In the same vein, Bessa argues that resettlement in the post-Cold War era has regained its humanitarian nature rather than utility as a political instrument.<sup>23</sup> In March and Olsen's term, "the logic of appropriateness" rather than of consequences provides justification for States to engage in resettlement.<sup>24</sup> According to this school of thought, States accept refugees via the resettlement route because it is an appropriate, ethical, and virtuous thing to do, regardless of eventual consequences or expected outcomes.

The third perspective, reciprocity, is usually maintained by institutionalists in IR theories. According to this camp, States calculate that 'if we help other countries currently facing a massive influx of refugees, they may help us in the future, when we face similar situations'. It is premised upon give-and-take in the web of relations between States, and such inter-State relations are often formulated, maintained, and promoted through international institutions and regimes. According to Krasner and Keohane, regimes are defined as "sets of implicit or explicit principles, norms, rules, and decision-making procedures around which actors' expectations converge in a given area of international relations".<sup>25</sup> It follows that, for reciprocal relations to function, there has to be convergence of mutual expectations among like-minded rational entities, that is, States. If interpreted in the context of resettlement, the argument would be that States resettle refugees because their expectations concerning the principles, norms, rules and decision-making procedures with respect to resettlement converge. On the basis of such convergence, States resettle refugees expecting that other States follow similar practices, which will eventually reduce their own burden.

Finally, the fourth category of States' incentives for resettlement is international reputation. Constructivists, such as Wendt, Katzenstein, Finnmore, and Checkel, would argue that States gradually internalise the idea of resettlement through interaction and socialisation with other entities, such as States and international or non-governmental organisations, and engage in resettlement with a view to living up to identities and cultures that are socially constructed.<sup>26</sup> States resettle refugees to maintain and promote legitimacy, (self-)esteem, and their good name in the international community. In other words, it is to safeguard international reputation, which is socially constructed through

---

<sup>21</sup> Noll & van Selm, "Rediscovering Resettlement", 12.

<sup>22</sup> *Ibid.*, 12.

<sup>23</sup> T. Bessa, "From Political Instrument to Protection Tool? Resettlement of Refugees and North-South Relations", *Refuge*, 26(1), 2009, 91-100.

<sup>24</sup> March & Olsen, "The Institutional Dynamics of International Political Orders", 943-969.

<sup>25</sup> S. D. Krasner, *International Regimes*, Ithaca, Cornell University Press, 1983, 1; Keohane, *After Hegemony*.

<sup>26</sup> A. Wendt, *Social Theory of International Politics*, Cambridge, Cambridge University Press, 1999; P. J. Katzenstein, *The Culture of National Security: Norms and Identity in World Politics*, New York, Columbia University Press, 1996; M. Finnmore, *National Interests in International Society*, Ithaca, Cornell University Press, 1996; J. T. Checkel, "The Constructivist Turn in International Relations Theory", *World Politics*, 50(2), 324-348, 1998.

global interactions.<sup>27</sup> Related to this perspective is a possible regional spill-over effect. When States in a particular region embark upon resettlement, their neighbours also start to consider the resettlement option, to keep their international reputation at least on a par with their neighbours'. It may be paraphrased as 'peer pressure' among States.<sup>28</sup> A case in point may be the European Resettlement Network, which started in 2010 and has yielded noticeable increases in the participation of European countries in resettlement, as well as "Resettlement in Solidarity", which has had a similar effect in Brazil, Chile, Argentina and Uruguay.<sup>29</sup> South Korea is perhaps another interesting case in point in that it decided to launch a resettlement programme in 2013, five years after the same decision was made by Japan in 2008.

Clearly, these four categories are not mutually exclusive, and some of them may overlap to a certain extent. For instance, reciprocity might be regarded as a sub-category of egoistic self-interest. It may also be argued that humanitarian altruism and international reputation mutually reinforce each other. Furthermore, some States may well engage in resettlement to pursue more than one of these objectives. Nevertheless, each of the four perspectives has a slightly different focus and emphasis. These will become clearer if we apply them to actual resettlement practices in the world, as will be done in the following sections.

#### 4. HISTORICAL CASES

To what extent do the four perspectives on States' decisions to resettle provide satisfactory explanations for the practice in our case studies? We begin with a brief review of two major historical cases, followed by an examination of the current resettlement landscape.

The most noteworthy examples of large-scale resettlement since the end of Second World War are the movements of approximately two million people during the late 1940s and early 1950s, and the resettlement and relocation of more than one million Indo-Chinese refugees after 1975. In the first case, it is maintained that the major factors that facilitated such massive migration included: the legacy of the Second World War and the strong remorse felt for failing to prevent the Holocaust; demand for labour force in the North and South American continent and Australia, which absorbed the surplus population in Europe; and the emerging ideological rivalry between 'the East and the West'.<sup>30</sup> It appears, therefore, that the theories of egoistic self-interest and humanitarian

---

<sup>27</sup> J. Mercer, *Reputation and International Politics*, Ithaca, Cornell University Press, 1996; D. Copeland, "Do reputations matter?" *Security Studies*, 7(1), 1997, 33-71.

<sup>28</sup> M. Finnmore & K. Sikkink, "International Norm Dynamics and Political Change", *International Organization*, 52(4), 1998, 903.

<sup>29</sup> European Resettlement Network, available at: <http://www.resettlement.eu/> (last visited 4 Aug. 2016); L. L. Jubilut & W. P. Carneiro, "Resettlement in Solidarity: A New Regional Approach towards a More Humane Durable Solution", *Refugee Survey Quarterly*, 30(3), 2011, 63-86.

<sup>30</sup> G. Loescher, "The International Refugee Regime: Stretched to the Limit?", *Journal of International Affairs*, 47(2), 351-377, 1994; B. Wasserstein, *Vanishing Diaspora: The Jews in Europe Since 1945*, Cambridge, Harvard University Press, 1997; A. Suhrke, "Burden-sharing During Refugee Emergencies: the Logic of Collective versus National Action", *Journal of Refugee Studies*, 11(4), 396-415, 1998; R.



altruism provide an adequate explanation for the factors that enabled massive resettlement in the aftermath of the Second World War.

In the second case concerning the Indo-Chinese refugees, it is usually argued that the Orderly Departure Program (ODP) and the Comprehensive Plan of Action (CPA) for the Indo-Chinese refugees were made possible by the following factors: the legacy of the Vietnam War and the sense of obligation to rescue the displaced populations arising from the war (particularly for the US); the heightened ideological rivalry between the East and the West under the Cold War; and the importance of maintaining regional security in the South China Sea, which played an important role for oil shipping sea lanes.<sup>31</sup> It is also noteworthy that the US functioned as a hegemon within ‘the West’ and successfully persuaded other governments to share the burden exceptionally by participating in ODP and CPA. Thus, it appears that the mixture of egoistic self-interest, humanitarian altruism, and international reputation (particularly for the US after the defeat of the Vietnam War) were the major driving forces behind the international solutions to the Indo-Chinese refugee crisis.

## 5. CURRENT GLOBAL OVERVIEW

As of the end of 2015, 33 governments had regular resettlement programmes with specified annual quotas or targets. Among these 33 countries, the number of refugees actually resettled over the past few years ranged from zero<sup>32</sup> to 74,654, the total admitted to the US in fiscal year 2009.<sup>33</sup> The gap between zero and nearly 75,000 is significant. In terms of criteria set by governments for the selection of refugees for resettlement, the most humanitarian practice is emergency admission of extremely vulnerable cases (such as the terminally ill, handicapped or single-female-headed households) via dossier-based selection. In contrast, the most restrictive selection criteria set by some countries are good educational backgrounds, good health conditions, practical skills and good “integration prospects”.<sup>34</sup> As regards procedures, some emergency cases are admitted to a third country in a matter of a few of days, while other refugees have to go through a lengthy security and background check which can take as long as two years.<sup>35</sup> Also, each resettlement government formulates its own standard operating procedures with varying degrees of engagement with international organisations (such as UNHCR and the

---

Karatani, “How History Separated Refugee and Migrant Regimes: In Search of Their Institutional Origins”, *International Journal of Refugee Law*, 17(3), 517-541, 2005; K. Long, “When refugee stopped being migrants: Movement, labour and humanitarian protection”, *Migration Studies*, 1(1), 4-26, 2013.

<sup>31</sup> Suhrke, “Burden-sharing During Refugee Emergencies”; C. Robinson, “The Comprehensive Plan of Action for Indochinese Refugees, 1989-1997: Sharing the Burden and Passing the Buck”, *Journal of Refugee Studies*, 17(3), 319-333, 2004; Betts, *Protection by Persuasion*.

<sup>32</sup> UNHCR, *Global Resettlement Statistical Report 2014*, Geneva, UNHCR, 2015, available at: [www.unhcr.org/52693bd09.pdf](http://www.unhcr.org/52693bd09.pdf) (last visited 29 Jun. 2016).

<sup>33</sup> The U.S. Department of State, *Worldwide Refugee Admissions Processing System*, available at: [https://foia.state.gov/\\_docs/PIA/WorldwideRefugeeAdmissionsProcessingSystem.pdf](https://foia.state.gov/_docs/PIA/WorldwideRefugeeAdmissionsProcessingSystem.pdf) (last visited 29 Jun. 2016).

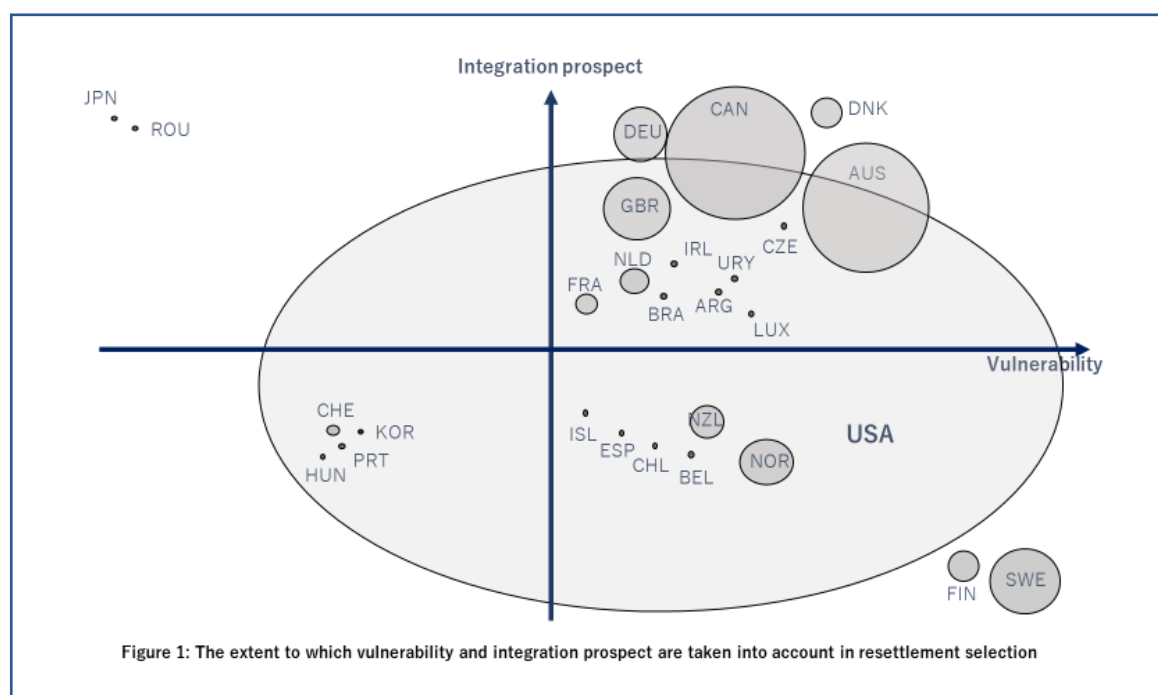
<sup>34</sup> The concept of “integration prospects” is discussed below.

<sup>35</sup> R. Capps & M. Fix, *Ten Facts about U.S. Refugee Resettlement*, Fact Sheet, Washington DC, Migration Policy Institute, Oct. 2015.

International Organization for Migration (IOM)) and non-governmental organisations (NGOs). This brief look at the numbers and profiles of refugees admitted, as well as resettlement procedures, already indicates a wide divergence in the quantity and quality of the current resettlement programmes in the world.

Figure 1 provides a comprehensive picture of the contemporary landscape of resettlement programmes implemented by 28 resettlement countries, as of 2014. While the total number of resettlement countries as of 2015 was 33, detailed data for some new resettlement countries are not yet readily available. The size of the circles represents the average number of refugees resettled via UNHCR submissions and admitted by 28 resettlement countries between 2010 and 2014. The statistics are based upon UNHCR's Global Resettlement Statistical Report 2014.<sup>36</sup> The *x* and *y* axes show the extent to which individual resettlement governments take into account vulnerability and "integration prospects" when selecting refugees to resettle. The information on the selection criteria employed by each government was extracted from the UNHCR's Resettlement Country Chapters and ECRE's Know-Reset Country Profiles.<sup>37</sup>

[Figure 1: The extent to which vulnerability and integration prospects are taken into account in resettlement selection]



<sup>36</sup> UNHCR, *Global Resettlement Statistical Report 2014*.

<sup>37</sup> UNHCR, *Resettlement Country Chapters*, Geneva, UNHCR, various years, available at: <http://www.unhcr.org/uk/protection/resettlement/4a2ccf4c6/unhcr-resettlement-handbook-country-chapters.html> (last visited 18 Aug. 2016); and European Council on Refugees and Exile (ECRE), *Know-Reset Resettlement Country Profiles*, Brussels, ECRE, various years, available at: <http://www.know-reset.eu/?c=00003> (last visited 20 Nov. 2015).

Two countries in the extreme corner in the lower right box are Sweden and Finland, which accept emergency vulnerable cases on dossier-based selection, with no particular integration prospects considered. Other countries towards the centre in the same box (Norway, New Zealand, Belgium, Chile, Spain, and Iceland) may consider vulnerable cases and have no or little regard to “integration prospects”. The US (the largest circle) should be regarded as belonging to this group. Those in the lower left box (Switzerland, South Korea, Portugal, and Hungary) set unclear criteria or are countries with no information available. Those in the upper right box (Australia, Canada, the U.K., Germany, the Netherlands, Denmark, France, Ireland, Brazil, Uruguay, Argentina, Czech Republic, and Luxembourg) have mixed criteria that take into account both integration prospects and vulnerability. Those in the upper left box (Japan and Romania) accept only refugees with high integration prospects. Clearly, the notion of “integration prospects” is controversial and its meaning varies not only from country to country but also over time within one country.<sup>38</sup> It is also worth underlining that being vulnerable does not automatically mean that the person will have difficulties in integrating. Deciphering what “integration prospects” actually means for respective resettlement countries (as well as resettling refugees) is beyond the scope of this paper; however, in general, countries assess it based on health conditions, vocational skills, educational backgrounds, language proficiency, cultural or religious backgrounds, and ties with receiving communities.

It is obvious that Figure 1 demonstrates significant variation in the practices of resettlement in terms of quality and quantity. In terms of quality, 13 out of 28 resettlement countries employ ‘mixed selection criteria’ that consider both vulnerability and integration prospects. At the same time, it is noteworthy that a few countries consider either vulnerability or integration prospects alone (i.e. Sweden and Finland in the former case, and Japan and Romania in the latter). In terms of quantity, it is evident from Figure 1 that the average admission numbers vary significantly between States. The US has been by far the largest recipient of refugees via resettlement, while 14 countries accept fewer than 50 refugees per year. It is true that Figure 1 only reflects the selection criteria that are made public and the numbers resettled via State-run programmes, without taking into account refugees resettled through private sponsorship schemes or humanitarian admissions, which have been expanding significantly in the past few years.<sup>39</sup> However, for the purpose of the present analysis, suffice it to say that Figure 1 demonstrates qualitative and quantitative variety in contemporary resettlement practices around the world.

## 6. LIMITED APPLICABILITY OF THE TRADITIONAL PERSPECTIVES

---

<sup>38</sup> K. S. Kohl, “The Tough and the Brittle: Calculating and managing the risk of refugees”, in T. T. Bengtsson, M. Frederiksen, & J. E. Larsen (eds.), *The Danish Welfare State: a sociological investigation*, New York, Palgrave Macmillan, 201-216, 2015.

<sup>39</sup> J. Kumin, *Welcoming Engagement: How Private Sponsorship Can Strengthen Refugee Resettlement in the European Union*, EU Asylum: Towards 2020 Project, Brussels, MPI Europe, Dec. 2015.

In light of this overall spectrum of contemporary global resettlement practices, how can we assess the applicability of the four traditional perspectives on States' motives for resettlement?

First, the notion of egoistic self-interest appears to exhibit a certain applicability in light of Figure 1. The majority of resettlement countries officially employ mixed selection criteria, taking into account the integration prospects of refugees to varying degrees. If States prefer young, healthy, educated refugees, their motives may stem from labour-shortage or demographic calculations. If States make linguistic, religious, or cultural background a condition, it may be understood as a measure to reinforce or at least not to jeopardise social cohesion or ethnic, religious or cultural balance within receiving communities. However, a limit of this theory is that there are still 22 countries that take vulnerability into consideration, even if it is to varying degrees. Some States have resettled extremely vulnerable individuals, such as the terminally ill, disabled, and elderly, who are unlikely to bring about any tangible 'benefits' to the receiving society in any immediate or material sense, even when there does not seem to be any political, diplomatic, or ideological gain for the receiving State. The '10 or more' or '20 or more' programmes run by some Nordic countries, under which extremely vulnerable refugees are resettled in a matter of few days, are a case in point.<sup>40</sup> While this perspective of egoism is more widely applicable than some of the other perspectives, it still cannot provide a universal theory to describe all States' motives for resettlement.

Regarding the second perspective on States' motives for resettlement, humanitarian altruism, only two countries (Sweden and Finland) do not take into account "integration prospects" in their selection criteria. The remaining 22 countries (excluding the four countries whose selection criteria are unclear) attach a certain degree of importance to "integration prospects" in one way or another. Clearly, one must be cautious about jumping to the conclusion that the countries that consider vulnerability alone are by definition more altruistic. For instance, Sweden and Finland may be accepting extremely vulnerable refugees for the purpose of improving or maintaining their international reputation. Yet, for States attaching more importance to the "integration prospects" of refugees, it would be difficult to argue that they resettle refugees based upon pure humanitarianism. If resettlement States are to claim that their motives are purely humanitarian, the only selection criterion should be the needs and vulnerability of individual refugees, rather than their health condition, qualifications or ties with local communities. Thus, the theory of humanitarian altruism may only apply to the two countries at the extreme corner of the lower right box (and potentially the four countries in the lower left box) but cannot apply to the remaining countries.

The third perspective, reciprocity, appears to be difficult to sustain because of the wide divergence of State practice in terms of both quantity and quality, as shown in Figure 1. To begin with, it is hard to imagine any concrete scenario in which many of the traditional resettlement countries such as Canada, New Zealand, and the Nordic countries

---

<sup>40</sup> For more details of '10 or more' and '20 or more' programmes, see UNHCR, *Resettlement Country Chapters*, or ECRE, *Know-Reset Resettlement Country Profiles*.

would be inundated with massive arrivals of spontaneous asylum-seekers.<sup>41</sup> Countries geographically situated in areas far from refugee-producing countries must have a different incentive for resettlement than reciprocity. In terms of quantitative convergence, the US has consistently borne the vast majority of resettlement burdens, and one might still refer to the US as a “*hegemon*” in the world of refugee resettlement,<sup>42</sup> at least at the time of writing. It is the “hegemonic stability model”<sup>43</sup> rather than the ‘regime model’ that can better explain the contemporary global resettlement spectrum. In terms of qualitative convergence, Figure 1 demonstrates that the 28 resettlement countries employ a variety of selection criteria, taking into account vulnerability and integration prospects to varying degrees. Put differently, there is no ‘convergence’ of expectations among resettlement States in terms of principles, norms, rules, and decision-making procedures regarding resettlement. The annual quotas and selection criteria of each resettlement country are decided at the national level, rather than at any international fora. Resettlement States do meet together with UNHCR and non-governmental organisations (NGOs) at the Annual Tripartite Consultations on Resettlement in Geneva, but they merely facilitate information-sharing and do not serve as a decision-making forum. While several calculation formulas have been proposed to distribute resettlement quotas in the world according to wealth, populations, unemployment rate, and other variables of affluent countries, such proposals have yet to take shape as an international norm.<sup>44</sup> In short, the quantitative and qualitative natures of resettlement programmes implemented by the 28 countries are so divergent that the logic of reciprocity demonstrates only limited explanatory power in the realm of contemporary refugee resettlement.

Finally, the fourth perspective of international reputation may well be the most applicable among the four traditional perspectives. States that share other countries’ burden of hosting refugees, and especially those that accept extremely vulnerable refugees, can certainly expect to improve their international reputation. Particularly in the era of highly developed information technology and social media, public information regarding which countries implement resettlement and how many refugees they accept is readily available on the internet. Such information would serve to improve the image and public opinions concerning those resettlement States. In addition, there appears to be an emerging belief that richer countries should admit more refugees via resettlement.<sup>45</sup> Economically developed countries may well feel a certain ‘peer pressure’ to admit refugees via resettlement, in order not to jeopardise their international reputation. At the same time, one may wonder how those countries that set restrictive selection criteria and

---

<sup>41</sup> Reception of 162,450 asylum applications by Sweden in 2015 could be regarded as an extraordinary event due to the open-border policy following the so-called Syrian refugee “crisis”.

<sup>42</sup> Suhrke, “Burden-sharing During Refugee Emergencies”.

<sup>43</sup> R. Gilpin, *War and Change in World Politics*, Cambridge, Cambridge University Press, 1981; Keohane, *After Hegemony*. In light of the reduction of the resettlement quota as recently announced by the US president, it remains to be seen if the global resettlement spectrum may be moving from the hegemonic stability model to the balance of power model.

<sup>44</sup> It is true that some EU Member States agreed upon the EU Emergency Relocation Scheme, but its implementation has been slow.

<sup>45</sup> J. Meyer, *The richest countries take the fewest refugees*, Agenda, Geneva, the World Economic Forum, Jul. 2016.

resettle tiny numbers of refugees (particularly Japan and Romania) could expect to improve their international reputation, when their resettlement motives appear to be based upon egoistic calculations. The same applies to a lesser extent to those countries with mixed selection criteria (countries in the upper right box in Figure 1). Despite its relatively wider applicability, the perspective of international reputation also fails to provide a universal account for all resettlement countries' motives.

The correlation between selection criteria and States' motives behind resettlement needs to be investigated more thoroughly through empirical case studies based upon in-depth fieldwork in each of the 33 resettlement countries. For our present purpose, however, suffice it to say that none of the four traditional perspectives seems to provide a common denominator universally applicable to the motives of all resettlement countries in the contemporary world. This poses significant problems in terms of both theory and practice. If a good theory has to demonstrate universality and contemporary applicability, the conventional wisdom appears somewhat unsatisfactory or outdated. In terms of practice, the lack of universally applicable theory hampers efforts of practitioners who hope to take advantage of theory-based predictability as a leverage to increase global resettlement quotas. This situation thus calls for a different hypothesis.

## **7. A DIFFERENT HYPOTHESIS: RESETTLEMENT AS AN ALTERNATIVE TO ASYLUM?**

In recent years, a perspective that regards resettlement as an "alternative pathway to protection" has emerged.<sup>46</sup> While this perspective was first officially articulated by the Government of Australia in 2012,<sup>47</sup> several States had previously demonstrated their preference for the resettlement route over the spontaneous asylum route.<sup>48</sup> In the following sections, we will firstly compare statistical trends of asylum and resettlement since 2000; secondly, review recent policy measures which demonstrate States' unequivocal preference for resettlement; and, thirdly, compare from the State perspective resettlement procedures with those of asylum, in order to identify a potential common denominator that can explain why an increasing number and variety of States resettle refugees.

### **7.1. Statistical comparison of asylum and resettlement since 2000**

Tables 1, 2, 3, 4, and 5 show the numbers of substantive asylum decisions made by the governments of destination countries, those who officially received Convention refugee status after lodging asylum applications upon spontaneous arrival (the asylum route),<sup>49</sup>

---

<sup>46</sup> A. Garnier, "Migration Management and Humanitarian Protection: The UNHCR's 'Resettlement Expansionism' and Its Impact on Policy-making in the EU and Australia", *Journal of Ethnic and Migration Studies*, 40(6), 942-959, 2014; Nakashiba, *Postmillennial UNHCR refugee resettlement*.

<sup>47</sup> Garnier, "Migration Management and Humanitarian Protection", 951-954.

<sup>48</sup> Van Selm, "The Strategic Use of Resettlement".

<sup>49</sup> It is true that a few cases upon resettlement might (be required to) apply for asylum to be officially granted a refugee status, and the UNHCR Statistics does not differentiate between the asylum claims lodged by spontaneously arriving asylum-seekers and those lodged by resettled individuals upon arrival.

and refugees admitted through the resettlement route in 2000, 2005, 2010, 2014, and 2015, according to the UNHCR Population Statistics.<sup>50</sup> Only the number of refugees recognised by Austria in 2014 is based upon Eurostat, since the number shown in the UNHCR Population Statistics (zero) is apparently inaccurate. While UNHCR data often differ from those issued by national authorities, this paper uses the UNHCR statistics for all the figures (except for Austria in 2014) to ensure compatibility and comparability. The tables list the top 10 countries accepting larger numbers of refugees via resettlement in a given year (omitting so-called humanitarian admissions, which are not included in UNHCR figures).

**Table 1**

**Year 2000**

	<b>Total decisions</b>	<b>Recognised Refugees</b>	<b>Resettlement</b>	<b>Recognition Rate</b>
<b>the U.S.</b>	111932	24000	<b>72515</b>	21.4%
<b>Canada</b>	28808	13989	13518	48.6%
<b>Australia</b>	18952	4607	<b>7330</b>	24.3%
<b>Sweden</b>	22405	480	<b>1501</b>	2.1%
<b>Norway</b>	15580	101	<b>1481</b>	0.6%
<b>Finland</b>	2024	13	<b>756</b>	0.6%
<b>New Zealand</b>	3524	295	<b>699</b>	8.4%
<b>Denmark</b>	9075	1327	464	14.6%
<b>Netherlands</b>	76822	1808	204	2.4%
<b>Japan</b>	236	22	<b>135</b>	9.3%
<b>(average)</b>				<b>13.2%</b>

However, it is understood from the actual procedures of the resettlement countries (see footnote 37) that the number of such asylum applications lodged by resettled refugees is minimal and that the vast majority of asylum claims are lodged by spontaneously arriving asylum-seekers.

<sup>50</sup> UNHCR, Population Statistics (online database), Geneva, UNHCR, available at: [http://popstats.unhcr.org/en/asylum\\_seekers](http://popstats.unhcr.org/en/asylum_seekers) (last visited 12 Jul. 2017). The total asylum decisions include all claims substantively reviewed in the given year, including the first instance, appeal instance, and repeated / reopened applications, since the UNHCR Statistics shows a combined figure for some countries in some years without making any distinction between the first instance, appeal instance, and repeated / reopened cases.

**Table 2****Year 2005**

	<b>Total Decisions</b>	<b>Recognised Refugees</b>	<b>Resettlement</b>	<b>Recognition Rate</b>
<b>the U.S.</b>	172470	19766	<b>53813</b>	11.5%
<b>Australia</b>	6801	1771	<b>11654</b>	26.0%
<b>Canada</b>	27150	12040	10400	44.3%
<b>Sweden</b>	53586	764	<b>1263</b>	1.4%
<b>Finland</b>	2084	12	<b>766</b>	0.6%
<b>Norway</b>	13489	629	<b>749</b>	4.7%
<b>New Zealand</b>	1013	210	<b>741</b>	20.7%
<b>Denmark</b>	2252	168	<b>483</b>	7.5%
<b>Netherlands</b>	26067	967	419	3.7%
<b>the U.K.</b>	71645	8665	175	12.1%
(average)				<b>13.3%</b>

**Table 3****Year 2010**

	<b>Total Decisions</b>	<b>Recognised Refugees</b>	<b>Resettlement</b>	<b>Recognition Rate</b>
<b>the U.S.</b>	69951	19034	<b>71362</b>	27.2%
<b>Canada</b>	32456	12305	12098	37.9%
<b>Australia</b>	9340	3859	<b>8516</b>	41.3%
<b>Sweden</b>	44717	2304	1786	5.2%
<b>Norway</b>	27102	3213	1097	11.9%
<b>the U.K.</b>	47834	9330	715	19.5%
<b>New Zealand</b>	524	125	<b>631</b>	23.9%
<b>Finland</b>	5820	179	<b>541</b>	3.1%
<b>Denmark</b>	3922	769	495	19.6%
<b>Germany</b>	42942	7703	469	17.9%
(average)				<b>20.7%</b>



**Table 4****Year 2014**

	<b>Total Decisions</b>	<b>Recognised Refugees</b>	<b>Resettlement</b>	<b>Recognition Rate</b>
<b>the U.S.</b>	71859	21760	<b>73011</b>	30.3%
<b>Canada</b>	21621	9943	<b>12277</b>	46.0%
<b>Australia</b>	13399	2540	<b>11570</b>	19.0%
<b>Sweden</b>	68532	10692	1971	15.6%
<b>Norway</b>	17977	3826	1286	21.3%
<b>Finland</b>	3706	501	<b>1089</b>	13.5%
<b>Netherlands</b>	20256	2743	791	13.5%
<b>the U.K.</b>	34690	10731	787	30.9%
<b>New Zealand</b>	497	154	<b>737</b>	31.0%
<b>Austria</b>	4070	2050	388	50.4%
(average)				<b>27.1%</b>

**Table 5****Year 2015**

	<b>Total Decisions</b>	<b>Recognised Refugees</b>	<b>Resettlement</b>	<b>Recognition Rate</b>
<b>the U.S.</b>	83031	23361	<b>52583</b>	28.1%
<b>Canada</b>	16083	9171	<b>10236</b>	57.0%
<b>Australia</b>	9114	3106	<b>5211</b>	34.1%
<b>Norway</b>	17610	5610	2220	31.9%
<b>Germany</b>	345318	138666	2097	40.2%
<b>Sweden</b>	71157	12960	1808	18.2%
<b>the U.K.</b>	50486	15325	1768	30.4%
<b>Finland</b>	6950	1060	964	15.3%
<b>New Zealand</b>	462	198	<b>756</b>	42.9%
<b>France</b>	122684	21287	700	17.4%
(average)				<b>31.5%</b>

As one can see from Tables 1, 2, 3, 4 and 5, the US, Australia, and New Zealand have consistently accepted much larger numbers of refugees via resettlement than those they have recognised as Convention refugees among spontaneously arriving asylum-seekers. Canada has often accepted similar numbers of refugees via resettlement to those granted Convention status upon spontaneous arrival. As these four countries are so-called “traditional immigration countries”, the scale of their resettlement admissions may well be explained as forming part of their overall immigration policies. Meanwhile, it is noteworthy that several Nordic countries, such as Sweden, Finland, Norway, and Denmark have often accepted larger numbers of refugees through resettlement than those arriving through the asylum route. It is true that simple comparison of the absolute numbers of refugees admitted through the asylum and resettlement routes does not generate any meaningful analysis. States do not (or rather *should* not) have any control over the number or the content of asylum claims made by spontaneously arriving asylum-seekers, and there is nothing wrong – at least in theory – in recognising only a few of them as refugees, if all other asylum-seekers do not meet the refugee definition prescribed in the Refugee Convention. On the other hand, decisions on resettlement targets or ceilings fall into the realm of complete State discretion, according to national priorities. Comparison of refugee recognition rates with resettlement acceptance rates, however, reveals an interesting tendency. The average refugee recognition rate of the top 10 resettlement countries was only 27.1 per cent in 2014 and 31.5 per cent in 2015. Some Nordic countries occasionally recognised an even smaller ratio of asylum-seekers as refugees; the refugee recognition rate was less than 1 per cent in Norway in 2000 and Finland in 2000 and 2005, as shown in the tables. Meanwhile, the same countries have accepted the vast majority of refugees submitted by UNHCR for resettlement. The global resettlement acceptance rate was 91.3 per cent in 2014 and 91.8 per cent in 2015.<sup>51</sup> While there is no official data issued by UNHCR as regards the global resettlement acceptance rates for earlier years, several researchers point out that the rate has significantly increased over the past two decades.<sup>52</sup> To be sure, those asylum-seekers who make their own way to faraway destination countries on the one hand and those refugees who are stranded in neighbouring developing countries on the other do represent very different populations. However, even when taking into account differences in individual persecution claims and profiles between spontaneous asylum-seekers and resettling refugees, the gap between 31.5 per cent (the average refugee recognition rate in 2015 among the top 10 resettlement countries) and 91.8 per cent (the global average resettlement acceptance rate in 2015) is still significant. This is particularly so given that countries of origin of spontaneously arriving asylum-seekers and nationalities of refugees to be resettled often overlap, such as Afghanistan, Eritrea, the Democratic Republic of the Congo, Iraq, Myanmar, Somalia,

---

<sup>51</sup> UNHCR, Resettlement Factsheets 2014, Geneva, UNHCR, 2015, available at: <http://www.refworld.org/docid/55aca2614.html> (last visited 1 Jul. 2016); and a statement made by a UNHCR representative at the Expert Meeting on Resettlement and Other Forms of Admission of Persons in Need of International Protection, EU Eastern Partnership Panel on Migration and Asylum, held 2-3 June 2016 in Stockholm. For more details, see: <http://eapmigrationpanel.org/en/meetings/expert-meeting-resettlement-and-other-forms-admission-persons-need-international-protection> (last visited 30 Dec. 2016).

<sup>52</sup> J. Frederiksson & C. Mougne, *Resettlement in the 1990s: A Review of Policy and Practice*, EVAL/RES/14, Geneva, UNHCR, Dec. 1994, 5; and van Selm, “The Strategic Use of Resettlement”, 42.

and Syria.<sup>53</sup> Although more disaggregated comparison of refugee recognition rates and resettlement acceptance rates for each country of origin and destination would probably yield interesting findings, the figure of 91.8 per cent, for the purpose of present analysis, generally suggests that the States put overwhelming trust in the refugee status determination (RSD) pre-conducted by UNHCR prior to the case submissions for resettlement. States' endorsement of the results of UNHCR's RSD is noteworthy, particularly given that UNHCR employs a wider refugee definition (known as 'mandate refugee recognition') than that contained in the Refugee Convention, and that States are well aware of this UNHCR practice.<sup>54</sup> Although some refugees are still required to lodge an official asylum application upon arrival in their country of resettlement, such procedures are usually for formality only, and their refugee status (or at least some kind of long-term residential status) is *de facto* guaranteed. In other words, the resettlement route allows both States and refugees to *bypass* the meticulous, adversarial, individual RSD procedures which are otherwise conducted by States Parties to the Refugee Convention vis-à-vis spontaneously arriving asylum-seekers.

In short, the recent asylum and resettlement statistics demonstrate that some States accept a much larger number of refugees through resettlement than asylum and that the resettlement acceptance rate is significantly higher than the refugee recognition rate. In other words, those States prefer accepting refugees through resettlement who are already screened in by UNHCR's RSD process prior to their arrival, to adjudicating asylum applications by spontaneous arrivals. This trend of placing preference on resettlement over asylum has taken shape in a more acute form for the past several years.

## **7.2. Recent policy trends highlighting preference of resettlement**

On 25 July 2011, the Governments of Australia and Malaysia signed an 'Arrangement on Transfer and Resettlement'.<sup>55</sup> Under this agreement, Australia would have sent to Malaysia 800 asylum-seekers who had arrived in Australia irregularly by boat; in return, Australia would have accepted 4,000 refugees for resettlement from Malaysia over the following four years. On 31 August 2011, however, the Australian High Court ruled that this 'refugee swap agreement' between the two countries was unlawful, given the inadequate legal protection for asylum-seekers in Malaysia, which is not a signatory to the Refugee Convention.<sup>56</sup> The refugee swap deal, therefore, did not materialise and no

---

<sup>53</sup> See UNHCR's annual reports 'Global Trends' in 2014 and 2015, available at: <http://www.unhcr.org/uk/statistics/country/556725e69/unhcr-global-trends-2014.html> (last visited 12 Jul. 2017) and <http://www.unhcr.org/uk/statistics/unhcrstats/576408cd7/unhcr-global-trends-2015.html> (last visited 12 Jul. 2017).

<sup>54</sup> Van Selm, *Ibid.*; Nakashiba, *Postmillennial UNHCR refugee resettlement*; and UNHCR, *Resettlement Handbook*.

<sup>55</sup> The text of the Arrangement is available from the website of the Parliament of Australia at: [http://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/FlagPost/2011/July/Australia-Malaysia\\_asylum\\_seeker\\_transfer\\_agreement](http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/FlagPost/2011/July/Australia-Malaysia_asylum_seeker_transfer_agreement) (last visited 30 Jun. 2016).

<sup>56</sup> J. Thompson, "High Court scuttles Malaysia swap deal", *ABC*, 6 Sep. 2011, available at: <http://www.abc.net.au/news/2011-08-31/high-court-rules-on-asylum-seeker-challenge/2864218> (last visited 29 Jun. 2016).

asylum-seeker in Australia or refugee in Malaysia was actually ‘swapped’. Nevertheless, the deal signalled that asylum and resettlement might be traded off.

Some five years on, a similar arrangement was made on the European continent. On 18 March 2016, an ‘EU–Turkey Statement’<sup>57</sup> was made public. The statement included an important action point in which all irregular ‘migrants’ coming to Greece through Turkey as from 20 March 2016 who would not apply for asylum in Greece, or whose application was deemed unfounded or inadmissible in accordance with the EU Asylum Procedures Directive, would be returned to Turkey. For every Syrian returned to Turkey from the Greek islands, another Syrian refugee would be resettled from Turkey to the EU, taking into account the vulnerability criteria set by UNHCR. This arrangement has been called a ‘one-on-one’ deal. In the final version of the EU-Turkey Statement, “the right to asylum” as provided in Article 18 of the EU Charter of Fundamental Rights just survived, at least on paper, but the extent to which the right is substantively guaranteed under the accelerated procedures in Greece is highly questionable.<sup>58</sup> Thus, although the details are different, the thrust of this deal and the Australia–Malaysia swap arrangement is essentially the same, in that resettlement places were offered in exchange for asylum-seekers, presumably in the hope of deterring spontaneous arrivals.

The preference for resettlement over asylum was unequivocally stated in the European Commission (EC)’s proposal for establishing a Union Resettlement Framework issued on 13 July 2016.<sup>59</sup> It stated that;

Resettlement should be *the preferred avenue* to international protection in the territory of the Member States and should not be duplicated by an asylum procedure. Accordingly, applications for international protection of persons resettled via an ordinary procedure, for whom a full assessment of their qualification as a refugee and eligibility as a beneficiary of subsidiary protection has been conducted, would not be admissible’ (emphasis added).<sup>60</sup>

This suggests that the EC prefers resettlement to asylum and that asylum adjudication should be conducted *prior to* the admission of refugees to the EU area. At the same time, the proposal included a number of new policies particularly noteworthy for the purpose of this paper, such as;

---

<sup>57</sup> European Union, *EU-Turkey Statement*, 18 March 2016, Press Release, 144/16, 18/03/2016, available at: <http://www.consilium.europa.eu/en/press/press-releases/2016/03/18-eu-turkey-statement/> (last visited 29 Dec. 2016).

<sup>58</sup> Charter of Fundamental Rights of the European Union (2012/C 326/02), 12 Dec. 2007 (entry into force: 1 Dec. 2009).

<sup>59</sup> EC, Proposal for a Regulation of the European Parliament and of the Council establishing a Union Resettlement Framework and amending Regulation (EU) No 516/2014 of the European Parliament and the Council, Brussels, 13.7.2016, COM (2016) 468 final, 2016/0255 (COD), available at: <https://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-468-EN-F1-1.PDF> (last visited 2 Sep. 2016).

<sup>60</sup> *Ibid.*, 13.

- It eliminates the possibility of resettlement for third country nationals or stateless persons who irregularly entered, irregularly stayed in, or attempted to irregularly enter into the EU during the previous five years prior to resettlement; this proposal runs the risk of violating Article 31 of the Refugee Convention, i.e. prohibition of imposing penalties on account of illegal entry of refugees;
- Application for resettlement could be made by those who have a well-founded fear of persecution but are still within their own countries; this proposal paves the way for increasing in-country asylum applications;
- In addition to the seven vulnerability categories for resettlement usually set by UNHCR, “persons with socio-economic vulnerability” are eligible for resettlement; and
- It allows EU Member States to request UNHCR to fully assess whether those submitted by UNHCR qualify as refugees within the meaning of Article 1 of the Refugee Convention.

Can these recent arrangements be explained by any of the four traditional perspectives? First, in contradiction to the perspective of pursuing egoistic self-interest, the EU–Turkey Statement underlined that refugees to be resettled should meet UNHCR’s vulnerability criteria. The EC’s proposals to institutionalise in-country application procedures and to widen the vulnerability criteria to encompass socio-economic factors (in addition to civil and political factors) can neither be explained by egoistic self-interest. Second, if Australia and the EU had altruistic humanitarian motives, they would have admitted refugees through resettlement without making it conditional on swapping with asylum-seekers. Also, the EC’s proposal to bar applications for resettlement by those who had irregularly entered the EU within the previous five years runs contrary to pure humanitarianism. Third, the reciprocity argument would expect that a similar arrangement would be made by other resettlement countries. While Australia and the EU appear to be following a similar path, it remains to be seen if such a swap deal becomes a universal ‘norm’ to be employed by other major resettlement countries, most notably the US and Canada.<sup>61</sup> The EC proposal, if adopted, would better harmonise principles, norms, and rules as regards resettlement, at least among EU Member States, although the EC clearly states that “the Member States remain the ones deciding on how many people they will resettle each year”.<sup>62</sup> It appears that the substantive decision-making procedures will remain at the national level, rather than at the regional or international level. Finally, both Australia and the EU have been harshly criticised from various corners for making such human-trading deals, leaving little hope for them to improve their international

---

<sup>61</sup> It would be interesting to observe if and how the ‘refugee swap deal’ reportedly discussed and agreed between the Australia and the US under the previous administration might be implemented, in which the US government would accept 1,250 asylum-seekers detained in Nauru and Manus Island on behalf of the Australian government while the Australian government would accept 50 El Salvadorian, Honduran and Guatemalan refugees hosted in Costa Rica on behalf of the US government.

<sup>62</sup> EC, *Establishing an EU Resettlement Framework: Frequently asked questions*, Fact Sheet, Brussels, 13 Jul. 2016, available at: [http://europa.eu/rapid/press-release\\_MEMO-16-2437\\_en.htm](http://europa.eu/rapid/press-release_MEMO-16-2437_en.htm) (last visited 29 Nov. 2016).

reputation. It remains to be seen if the new Union Resettlement Framework, once implemented, will help to ameliorate the image of the EU tarnished by its responses to the recent European ‘refugee crisis’. In sum, none of the traditional perspectives seems to be able to offer an overarching explanation for these recent practices and proposals, while the emerging trend indicates that resettlement is increasingly used as an alternative to asylum.

### **7.3. Procedural comparison between asylum and resettlement**

Why have some States started to use resettlement as an alternative to asylum? It is not surprising if one compares current practices of the asylum route with the resettlement route purely from States’ perspectives: for States, resettlement serves the logic of migration management.

In the case of asylum-seekers, receiving States have no access to their identities prior to arrival; they may be genuine refugees, economic migrants, or ‘potential criminals’. It is not unusual that asylum-seekers cannot even confirm their officially registered name or date of birth or nationality upon arrival. Meanwhile, States cannot expel or *refouler* any asylum-seekers once they are within their jurisdiction until and unless, following a thorough adjudication process, they are found not to be in need of or deserving of any form of international protection. At the same time, arrivals of asylum-seekers are, by definition, spontaneous and often clandestine. It is difficult, if not impossible, to predict if they come, when they come, and how they come. States have no control (at least in theory) of how many asylum applications they may receive in any given year; it could be zero or a million as the recent case of Germany demonstrated. As regards costs, it is often held that resettlement is an expensive enterprise.<sup>63</sup> It is difficult to generalise and compare costs, as each asylum case differs and resettlement countries have quite diverse programmes. However, if one includes the personnel costs of immigration officials, lawyers, and judges involved in individual RSD procedures, some cases of repeated asylum claims or those appealed at regional courts such as the European Court of Human Rights may well be expensive.<sup>64</sup> Furthermore, asylum incurs another ‘cost’, namely the political implication vis-à-vis the government of the countries of origin. As is often said, nothing is more political than providing asylum to those refugees fearing persecution due to their political opinions.<sup>65</sup> That is why nearly all asylum-seekers fleeing communist regimes during the Cold War were provided asylum almost automatically, thereby enabling the ‘Western States’ to undermine communism.

---

<sup>63</sup> P. Kingsley, “Why does resettling a refugee cost £ 17,000 in the US – but £ 85,000 in Britain?”, *The Guardian*, 13 Sep. 2016, available at: <https://www.theguardian.com/world/shortcuts/2016/sep/13/why-does-resettling-a-refugee-cost-17000-in-the-us-but-85000-in-britain> (last visited 27 Oct. 2016).

<sup>64</sup> M. Kagan, “The Beleaguered Gatekeeper: Protection Challenges Posed by UNHCR Refugee Status Determination”, *International Journal of Refugee Law*, 18(1), 2006, 1-29; and J. Hathaway, “A Global Solution to a Global Refugee Crisis”, *Verfassungsblog on Matters Constitutional*, available at: <http://verfassungsblog.de/a-global-solution-to-a-global-refugee-crisis/> (last visited 29 Dec. 2016).

<sup>65</sup> G. S. Goodwin-Gill, “The Politics of Refugee Protection”, *Refugee Survey Quarterly*, 27(1), 2008, 8-23.

In the case of resettlement, in contrast, at least basic identities of resettlement applicants have already been verified and registered by UNHCR prior to submissions. For some countries, IOM compiles comprehensive individual profiles of resettling refugees to facilitate the eventual integration process.<sup>66</sup> Also, States may decide to reject or at least delay arrivals of resettling refugees during pre-arrival selection procedures, according to their annual targets or ceilings, or depending upon whether the needs of resettling refugees can be met by the capacities of local receiving communities. Resettlement procedures are meticulously planned and controlled, step by step, from dossier submissions, interviews (often in-person), health screening, pre-departure orientation, departure and entry procedures, and reception arrangements to integration assistance.<sup>67</sup> Even for emergency cases, governments are informed of arrivals at least a few days in advance. RSD has already been conducted at least partly by UNHCR prior to submissions, allowing resettlement governments to conduct only a nominal RSD procedure, if any, as recommended in the EC proposal for the Union Resettlement Framework. When it comes to cost, the per capita cost for resettling vulnerable or medical cases may well be higher than that required to integrate healthy, young asylum-seekers. However, resettlement of even such ‘expensive cases’ is implemented in accordance with budgetary and operational plans formulated well in advance, allowing government bureaucrats to justify its fiscal expenditures to their legislative bodies. Although political ‘cost’ is not completely eradicated in case of resettlement either, resettlement is possibly less politically sensitive than asylum, in that the accepting governments could use the rhetoric of burden-sharing ‘for the sake of’ the first countries of asylum and claim that the RSD was pre-conducted by UNHCR.<sup>68</sup>

To sum up, resettlement is an orderly, managed, controlled, and possibly cheaper migration scheme for States.<sup>69</sup> Particularly given the increasing security concerns stemming from the *images* of ‘uncontrolled arrivals of large numbers of asylum-seekers’, States appear increasingly to perceive resettlement as a more reasonable alternative to asylum. Another incentive may be that resettlement saves States from conducting individual RSD procedures upon arrival which can be costly in financial, political, and diplomatic terms. Resettlement is thus a ‘rational’ alternative for States, at least in comparison to asylum.

## **8. RESETTLEMENT AS A ‘RATIONAL’ CHOICE FOR SOVEREIGN STATES**

---

<sup>66</sup> IOM Thailand, “Assessing the Individual Needs of Karen Refugees in Thailand”, available at: <https://www.iom.int/assessing-individual-needs-karen-refugees-thailand> (last visited 1 Aug. 2016).

<sup>67</sup> IOM, *Resettlement*, Geneva, IOM, available at: <https://www.iom.int/resettlement-assistance> (last visited 18 Aug. 2016).

<sup>68</sup> Van Selm, “The Strategic Use of Resettlement”.

<sup>69</sup> The MPI Europe Report issued in May 2017 (while this manuscript was being reviewed) also acknowledges this point. Beirens & Fratzke, *Taking Stock of Refugee Resettlement*, MPI Europe, 14.

The hypothesis that States prefer resettlement as a rational alternative to asylum can find a theoretical framework within the Rational Choice Theory.<sup>70</sup> According to this theory, individuals anticipate the outcomes of alternative courses of action and choose the alternative that is likely to give them the greatest satisfaction based upon calculation.<sup>71</sup> In the context of IR, the argument would be that States choose whatever strategy or course of action makes the better outcomes most likely, or maximises their utility or benefits.<sup>72</sup> For the Rational Choice theorists, it is individual self-interest and utilitarian calculation that govern the choice of the course of action, not altruism, reciprocity, social norms, or reputation. In this sense, its starting point substantially overlaps with what traditional Realists have argued. However, the most important difference between the Realist and Rational Choice arguments in terms of the central question of this paper is that not all resettlement States are necessarily concerned with the ‘utility’ of resettled refugees as a labour force or with expected diplomatic outcomes or security in the region of origin. In light of the recent developments summarised above, States appear to be more concerned with the *procedures* and *methods* with which refugees are admitted than with the ultimate consequences. The core State interest – or ‘*preference*’ as the Rational Choice theorists would put it – is in the complete control as to which refugees to resettle based upon pre-screening conducted *before* they arrive. Furthermore, the current trend cannot be perceived as simply being driven by egoism, given the increasing emphasis on vulnerability criteria, as demonstrated by the EU–Turkey deal, the U.K.’s ‘Syrian Vulnerable Person Resettlement Programme’, and the EC proposal to even expand the vulnerability criteria.

According to the Rational Choice Theorists, States’ identities, interests, and preferences are fixed and pre-determined. Obviously, 33 resettlement countries have hugely divergent self-images and interests, which should be explored in separate empirical studies of 33 individual countries. Notwithstanding, there are two fundamental features that are common for all the resettlement countries. One is that they are all sovereign States with the imperative to secure border control and ensure orderly and managed arrival of foreign nationals. The fact that “resettlement does not challenge State sovereignty” can function as a powerful incentive for States.<sup>73</sup> The other feature is that they are all States Parties to the Refugee Convention, and this indicates two things: one is that these 33 States are committed to the idea of refugee protection at least officially and legally; and the other is that they have received fluctuating numbers of asylum

---

<sup>70</sup> D. Snidal, “Rational Choice and International Relations”, in W. Carlsnaes, T. Risse & B. A. Simmons (eds.) *Handbook of International Relations*, London, Sage Publication, 2013, 83-111; J. D. Fearon & A. Wendt, “Rationalism v. Constructivism: a Skeptical View”, in W. Carlsnaes, T. Risse & B. A. Simmons (eds.) *Handbook of International Relations*, London, Sage Publication, 2002, 52-72.

<sup>71</sup> J. Scott, “Rational Choice Theory”, in G. Browning, A. Halcli, & F. Webster (eds.) *Understanding Contemporary Society: Theories of the Present*, London, Sage Publications, 2000.

<sup>72</sup> A. H. Kydd, “Methodological Individualism and Rational Choice”, in C. Reus-Smit & D. Snidal (eds.) *The Oxford Handbook of International Relations*, Oxford, Oxford University Press, 2008, 425-443.

<sup>73</sup> A. Macklin, *Resettler Society: The Canadian Model of Private Refugee Sponsorship*, Keynote Address at a Refugee Studies Centre Conference, Beyond Crisis: Rethinking Refugee Studies, held in Keble College, University of Oxford, 16 Mar. 2017.



applications over the past several decades.<sup>74</sup> In addition, some newly emerging resettlement countries (such as Belgium, Germany, Italy, Japan, South Korea, and Switzerland) typically launched their official resettlement programmes only after conducting pilot cases or engaging with resettlement on an *ad hoc* basis. Thus, those States can empirically compare pros and cons of the asylum process and the resettlement process as alternatives, as outlined above. When sovereign States have a fixed interest in border control on the one hand and a commitment to refugee protection on the other, the rational solution to the equilibrium appears to be resettlement.

This perspective of rationality does not automatically negate the partial applicability of the four traditional perspectives. As shown in Figure 1, egoistic self-interest, altruistic humanitarianism, reciprocity, and international reputation function as a *necessary* condition for the States to become interested in resettlement to varying degrees depending upon their respective national interests and priorities. However, one common *sufficient* condition that makes States actually implement resettlement seems to be the complete control that States can enjoy over resettlement procedures. As Wohlforth puts it, the rationality assumption is shared by almost all theories of international politics and thus this alternative hypothesis can co-exist with other traditional perspectives.<sup>75</sup> In other words, what possibly penetrates as a common denominator for all resettlement countries' reasons for resettlement is the logic of border control and migration management, *in addition to* other various motives and incentives.

At the same time, it is important to emphasise that the resettlement route has never been able to 'replace' the asylum route completely. As van Selm underlines, '[n]o country that carries out resettlement in significant numbers has seen spontaneous arrivals of asylum-seekers disappear or dwindle as a result of resettlement'.<sup>76</sup> Efforts to provide refugees with an orderly, safer and managed protection route should not mean, and have not actually resulted in, decreasing numbers of spontaneous arrivals of asylum-seekers.<sup>77</sup> A quick glance at any recent asylum and resettlement statistics will demonstrate that there is no empirical evidence for inverse proportion between the numbers of asylum applicants and refugees resettled in any country. Even in an unlikely event where resettlement opportunities should be provided for all refugees identified by UNHCR as being in need of resettlement, there will always be individuals who would spontaneously arrive and seek asylum upon arrival. In other words, increase in resettlement has no "deterrent effect" on asylum-seekers arriving spontaneously and irregularly.<sup>78</sup> Resettlement cannot 'deter'

---

<sup>74</sup> See Tables 1, 2, 3, 4, and 5; and annual reports and statistics provided in UNHCR *Global Trends*, available at: <http://www.unhcr.org/uk/search?comid=56b079c44&&cid=49aea93aba&tags=globaltrends> (last visited 5 Jan. 2017).

<sup>75</sup> W. Wohlforth, "Realism", in C. Reus-Smit & D. Snidal (eds.), *The Oxford Handbook of International Relations*, Oxford, Oxford University Press, 2008, 132, footnote 6.

<sup>76</sup> Van Selm, "The Strategic Use of Resettlement", 41-45.

<sup>77</sup> *Ibid.*, 47.

<sup>78</sup> European Parliamentary Research Service, *Refugee and asylum policy in Australia: Between resettlement and deterrence*, Briefing, Brussels, EU, Nov. 2016.

or ‘replace’ asylum, and this article does use the term ‘alternative’ in the sense of ‘replacement’.

In conclusion, to answer the specific question of why an increasing number and variety of States have recently chosen to engage in resettlement proactively, the hypothesis of *resettlement as a rational alternative to asylum for sovereign States wishing to manage migration* provides a different perspective which seems to demonstrate potential applicability as a common denominator to all resettlement States.

## 9. CONCLUSION

This paper has attempted to tackle the question of why States admit refugees through resettlement within the framework of IR theories. After demonstrating the limited explanatory power of the traditional theories vis-à-vis the contemporary resettlement spectrum, the paper proposed a different hypothesis – resettlement as a rational alternative to asylum for sovereign States wishing to manage migration – based upon recent empirical trends and examples. The complete control that States can exert over the resettlement procedures and the possibility of avoiding individual asylum adjudication procedures upon arrival are the common feature that the resettlement route can offer all sovereign States.

This conclusion by no means denies the applicability of the existing theories. Each of the four traditional perspectives applies to the motives of some resettlement countries to varying degrees. Meanwhile, too little attention has been paid until now to the procedural advantage of resettlement which can function as the common denominator for all States’ incentives. The fact that resettlement allows accepting States to control the entire procedures and choose whom to accept *prior to* arrival is appealing to sovereign States eager to control their borders and reduce irregular migrants.

The paper does not claim that this alternative hypothesis has already been adequately demonstrated. The notion of resettlement as an alternative to asylum is still at its hypothetical stage and needs to be tested further against a number of in-depth empirical studies, preferably for all of the 33 resettlement countries. To this end, the author has been conducting field-based longitudinal studies on an emerging resettlement country, i.e. Japan, tracing the process in which an international notion of resettlement has come to be embraced by national decision-makers. The argument in this paper simply adds another hypothesis to be tested in other empirical process-tracing research to identify a causal mechanism resulting in resettlement decisions made by States, particularly non-immigration countries.

The paper has intentionally eschewed making any value judgment on the emerging policy preference. Normative evaluation on the trend of resettlement being used – or even abused – as an alternative to asylum is a totally separate question from the theoretical analyses that this paper has engaged with. Rationality does not automatically connote ‘good’ or ‘legitimate’ or ‘justifiable’. It goes without saying that resettlement should remain a complement to, and not a substitute for, the right to seek asylum, as

already emphasised by many scholars.<sup>79</sup> The emerging trend of trading between asylum-seekers and refugees to be resettled has clearly run the egregious risk of eroding the institution of asylum. Separate research is needed to analyse critically negative as well as potentially positive aspects of the emerging trend in terms of both principles and pragmatism.<sup>80</sup> For instance, to what extent has the shift from asylum to resettlement deprived spontaneously arriving asylum-seekers of the right to seek asylum and increased de facto deportation? To what extent have increased security concerns shifted the focus of selection criteria from integration prospects to vulnerability, thereby making resettlement opportunities available for more vulnerable refugees? If the in-country asylum application procedures are expanded and institutionalised, as proposed in the EC proposal, could it truly facilitate overcoming one of the critical flaws of the current international refugee protection regime, in that asylum is fundamentally premised upon individuals' ability to flee the country of origin?<sup>81</sup> Clearly, more research is needed.

Lastly, while the paper has mainly engaged with deductive theory applications and the proposal of a new hypothesis, such a theoretical dialogue has practical implications, as well. By focusing on how States perceive two distinct refugee protection tools, the paper has attempted to shed light on the logics behind the preference placed by sovereign States on resettlement over asylum, i.e. migration management and pre-arrival screening. International and national actors who have been struggling to improve global resettlement practice significantly either in quantity or in quality should take full advantage of the leverage power of State motives such as these.

---

<sup>79</sup> G. Troller, "UNHCR Resettlement: Evolution and Future Direction", *International Journal of Refugee Law*, 14 (1), 2002, 85-95; G. Noll, "Visions of the Exceptional: Legal and Theoretical Issues Raised by Transit Processing Centres and Protection Zones", *European Journal of Migration and Law*, 5, 2003, 303-401; Garnier, "Migration Management and Humanitarian Protection"; van Selm, "Refugee Resettlement", in E. Fiddian-Qasmiyeh, G. Loescher, K. Long, & N. Sigona (eds.), *The Oxford Handbook on Refugees and Forced Migration Studies*, Oxford, Oxford University Press, 2014, 512-524.

<sup>80</sup> E. Ferris, *In search of commitments: The 2016 refugee summits*, Policy Brief 3, Kaldor Centre for International Refugee Law, Nov. 2016.

<sup>81</sup> A. Shacknove, "Who Is a Refugee?", *Ethics*, 95(2), 1985, 274-284; and J. Hathaway, "Is Refugee Status Really Elitist? An Answer to the Ethical Challenge", in J. Carlier & D. Vanheule (eds.), *Europe and Refugees: A Challenge?* Springer, 1997, 7-89.